

FILED

MAY 08 2023

Attachment A

U.S. DISTRICT COURT-WVND  
CLARKSBURG, WV 26301**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR  
CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		Northern District of West Virginia	
Name (under which you were convicted): Thomas Winston		Criminal Case No.: 1:20-CR-87 / 1:23 cv 41	
Place of Confinement: FCI McDowell		BOP Prisoner No.: 297 43 509 Kleeh / Aldi / Prince	

**MOTION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging: US District Court 500W. Pike St,  
Room 301, Clarksburg, WV 26302
- (b) Criminal case number (if you know): 1:20-CR-87
2. (a) Date of the judgment of conviction (if you know): \_\_\_\_\_
- (b) Date of sentencing: May 2022
3. Length of sentence: 235 months
4. Nature of crime (all counts): Possession of Child Porn

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5. (a) What was your plea? (Check one)

Not guilty ☐

Guilty ☒

Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count of the indictment, and a not guilty plea to another count of the indictment, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

8. Did you appeal from the judgment of conviction? Yes ☐

No ☒

9. If you did appeal, answer the following:

(a) Name of court: \_\_\_\_\_

(b) Appeal case number (if you know): \_\_\_\_\_

(c) Result: \_\_\_\_\_

(d) Date of result (if you know): \_\_\_\_\_

(e) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(f) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes

☒ No

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If yes, answer the following:

(1) Case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Grounds raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court? ☐ Yes ☒ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? ☐ Yes ☐ No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

- (b) If you filed a second motion, petition, or application, give the same information:

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(1) Name of court: \_\_\_\_\_

(2) Case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your petition, application, or motions? ☐ Yes ☐ No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First Petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach no more than 5 typed or 10 neatly printed additional pages total for all grounds if you have more than four grounds. State the facts supporting each ground.

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**GROUND ONE:**

(a) Supporting facts ( Do not argue or cite law. Just state the specific facts that support your claim.): Bias Judge because he said

"I feel you have not been punished enough  
in your past so I'm giving you the Max"  
on the Day I was sentenced May 2022

(b)

**Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

Because the plea said no direct Appeal  
and my lawyer said no Direct Appeal

**(c) Post Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed:

Case number (if you know): \_\_\_\_\_

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Date of the Court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☒ No

(5) If your answer to Questions (c)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) What was the result? \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND TWO:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Infected Counselor because he did  
not Represent to his Best Ability. Plus made promises  
to under 10 year, Always on his phone in Court, I  
was told not to speak openly just keep it yes and  
no sir

(b) Direct Appeal of Ground Two:

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(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

Because of the Plea  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(c) Post Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed:  
\_\_\_\_\_  
\_\_\_\_\_

Case number (if you know): \_\_\_\_\_

Date of the Court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☒ No

(5) If your answer to Questions (c)(4) is "Yes," did you raise this issue in the

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appeal? ☐ Yes ☐ No

(6) What was the result? \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND THREE:**

(a) Supporting facts ( Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(c) Post Conviction Proceedings:**



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(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed:

\_\_\_\_\_  
\_\_\_\_\_

Case number (if you know): \_\_\_\_\_

Date of the Court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☐ No

(5) If your answer to Questions (c)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) What was the result? \_\_\_\_\_

\_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**GROUND FOUR:**

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(a) Supporting facts ( Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(c) Post Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed:

\_\_\_\_\_  
\_\_\_\_\_

Case number (if you know): \_\_\_\_\_

Date of the Court's decision: \_\_\_\_\_

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Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☐ No

(5) If your answer to Questions (c)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) What was the result? \_\_\_\_\_

If your answer to Question (c)(4) is "Yes," state:

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: \_\_\_\_\_

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

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If "Yes," state the name and location of the court, the case number, the type of proceeding, and the issues raised. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Richard Walker  
500 W Pike St Clarksburg WV 26302

(b) At arraignment and plea: Richard Walker  
500 W Pike St Clarksburg WV 26302

(c) At trial: Richard Walker  
500 W Pike St Clarksburg WV 26302

(d) At sentencing: Richard Walker  
500 W Pike St Clarksburg WV 26302

(e) On appeal: \_\_\_\_\_

\_\_\_\_\_

(f) In any proceeding after conviction other than direct appeal: \_\_\_\_\_

\_\_\_\_\_

(g) On appeal from any ruling against you in any post-conviction proceeding after conviction other than direct appeal: \_\_\_\_\_

\_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

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- (a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_
- (b) Give the date the other sentence was imposed: \_\_\_\_\_
- (c) Give the length of the other sentence: \_\_\_\_\_
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future?

Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final more than one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.<sup>1</sup>

Therefore, you ask that the Court grant the following relief:

Vacate sentence And Return to be re sentencing without Bias  
and with the Better Attorney that Doesn't Make False Promises  
The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as  
contained in 28 U.S.C. § 2255 paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of -

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court, if applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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and any other relief to which you may be entitled.

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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on May 04, 2023 (month, day, year).

Executed (signed) on May 04 2023 (date).

Thomas J. Winston  
Your Signature

If the person signing is not you, state the relationship to you and explain why you are not signing this petition.

Attachment B

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

Thomas Winston

Your full name

v.

United State of America

Civil Action No.: 1:20-CR-87

Enter above the full name of respondent in this action

**Certificate of Service**

I, Thomas John Winston (your name here), appearing *pro se*, hereby  
certify that I have served the foregoing 28 U.S.C. § 2255 (title of  
document being sent) upon the respondent by depositing true copies of the same in the  
United States mail, postage prepaid, upon the following counsel of record for the  
respondent on 05/4/23 (insert date here):

(List name and address of counsel for respondent)

US Attorney Office  
500 W Pike St  
Clarksburg WV 26302

Thomas Winston  
(sign your name)